

ISSUE DATE: March 21, 1996

DOCKET NO. E-002/CN-95-865

ORDER GRANTING CERTIFICATE OF NEED

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Joel Jacobs
Tom Burton
Marshall Johnson
Dee Knaak
Don Storm

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the 1995 Application of
Northern States Power Company for a
Certificate of Need for Approximately 100
Megawatts of Wind Generation

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PROCEDURAL HISTORY

In May, 1994, the Minnesota legislature enacted legislation that requires Northern States Power Company (NSP or the Company) to add 225 megawatts (MW) of wind power by the end of 1998 and another 200 MW by the end of 2002. Minn. Stat. § 216B.2423, subd. 1.

The Minnesota Public Utilities Commission granted NSP a certificate of need to provide 100 MW of wind power on April 19, 1995.¹

On September 25, 1995, the Commission issued its ORDER GRANTING EXEMPTION FROM CERTAIN CERTIFICATE OF NEED FILING REQUIREMENTS AND VARIANCE in the current docket. In that Order the Commission granted NSP an exemption from certain filing requirements prior to NSP's filing a certificate of need application for an additional increment of wind generation.

On September 29, 1995, NSP filed the certificate of need application for 100 MW of wind conversion generating capability.

On November 2, 1995, the Commission issued its ORDER ACCEPTING APPLICATION AND DELEGATING PREPARATION OF ENVIRONMENTAL REPORT and NOTICE AND ORDER FOR HEARING. The Commission referred the matter to the Office of Administrative Hearings, which assigned Administrative Law Judge (ALJ) Allan W. Klein to conduct contested case proceedings.

On February 21, 1996, NSP filed a letter expressing a commitment to pay all fees payable

¹ In the Matter of the Application of Northern States Power Company for a Certificate of Need for Approximately 100 Megawatts of Wind Generation, Docket No. E-002/CN-94-795, ORDER GRANTING CERTIFICATE OF NEED.

under Minn. Rules, part 7849.0210.

II. PARTIES AND REPRESENTATIVES

NSP was represented in these proceedings by Jeffrey C. Paulson, 414 Nicollet Mall, Minneapolis, Minnesota 55401.

The Department of Public Service (the Department) was represented by Kathy McGill, Assistant Attorney General, 1200 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101-2130.

The Residential Utilities Division of the Office of the Attorney General (RUD-OAG) was represented by Sara J. DeSanto, Assistant Attorney General, 1200 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101-2130.

III. STIPULATED FINDINGS

On January 30, 1996, NSP and the Department filed stipulated proposed Findings of Fact and Conclusions of Law. The RUD-OAG informed the ALJ that it had no objection to the proposed stipulation.

IV. PUBLIC AND EVIDENTIARY HEARINGS

A public hearing and evidentiary hearing were held in Ruthton, Minnesota, on January 8, 1996.

No written comments from the public were filed.

V. PROCEEDINGS BEFORE THE COMMISSION

The ALJ filed his Findings of Fact, Conclusions of Law and Recommendations on February 5, 1996. The ALJ adopted almost all of the stipulated proposed Findings in his report, with some language changes and some additions.

On March 7, 1996, the matter came before the Commission for consideration.

FINDINGS AND CONCLUSIONS

I. FACTUAL BACKGROUND

NSP proposes to locate its wind generation project in an area of approximately 14,000 acres known as Buffalo Ridge in southwestern Minnesota. On December 29, 1995, NSP filed an application for a site permit from the Minnesota Environmental Quality Board.

The wind project will be developed by a bidder or bidders selected through a competitive bidding process implemented by NSP. The winning bidder will provide all turbines, towers, and related facilities; NSP will own and operate the substation and feeder system necessary to

bring the wind generation into NSP's system.

II. CERTIFICATE OF NEED CRITERIA; THE ALJ'S FINDINGS

The criteria for granting a certificate of need are set forth in Minn. Stat. § 216B.243 and Minn. Rules, parts 7849.0100-.0120.

Minn. Rules, part 7849.0120 provides four criteria which must be met in order to establish need for the proposed generating facility.

A. The probable result of denial would be an adverse effect upon the future adequacy, reliability, or efficiency of energy supply to the applicant, to the applicant's customers, or to the people of Minnesota and neighboring states.

The ALJ stated that the Commission has specifically found NSP's resource plan forecast model to be extremely accurate over the long term. NSP identified a need for additional generating capacity in its 1995 resource plan.

The ALJ noted that NSP engages in substantial conservation efforts with a resulting reduction in projected demand. Nevertheless, because the wind project is a response to statutory mandates which are not based on expected demand, NSP's conservation programs will not eliminate the need for the project.

The 1994 statutes specifically direct the addition of 225 MW of wind generation to NSP's system. NSP currently has only 25 MW of wind generation on its system. In order to meet the statutory mandate, NSP must add 200 MW of wind generation to its system.²

The ALJ stated that the wind project will contribute to NSP's system reliability, although the contribution is expected to be minimal due to the size of the project compared to the size of NSP's system. The project will use available, unused wind resources which otherwise may not have been developed.

B. A more reasonable and prudent alternative to the facility has not been demonstrated by a preponderance of the evidence on the record.

Because the wind project is a response to statutory directives, the ALJ stated, non-wind generation resources are not available alternatives. For this reason, the only relevant cost comparison is to other wind generation alternatives totaling 100 MW.

Bidders or the Minnesota Environmental Quality Board could propose alternatives to NSP's proposed Buffalo Ridge site. The bidding process should ensure that any selected project will produce an economical and efficient alternative. The independent evaluator in the bidding process will analyze bids and recommend the project which best meets NSP's requirements for

² Although the Commission has granted NSP a certificate of need for 100 MW of wind generation in Docket No. E-002/CN-94-795, the wind generation facility has not yet come online.

the most economical wind generating resource possible.

Permitting a wind project larger than 100 MW is not a good alternative because the process would likely exceed the time limits imposed by the statute. Furthermore, implementing the required wind generation in successive 100 MW stages permits NSP to spread the financial impact. Implementation in stages also allows the Company to take advantage of the latest technological advances.

The reliability of the project depends on the mechanical availability of the turbines and the extent to which the wind blows. Although turbines will be sited to take maximum advantage of available resources, the amount of wind available is not subject to control. NSP has created incentives to ensure maximum availability of turbines and maximum use of wind resources.

C. By a preponderance of the evidence on the record, the proposed facility, or a suitable modification of the facility, will provide benefits to society in a manner compatible with protecting the human and socioeconomic environments, including human health.

The ALJ stated that the wind project will generate no emissions or waste, and is thus preferable to all non-renewable generating resources.

The potential adverse environmental impacts of the wind project include increased noise levels, increased avian mortality, removal of land from existing agricultural uses, and aesthetic considerations. Because NSP has taken steps to minimize any adverse impact, none of these environmental problems is expected to occur at a significant level.

The ALJ stated that the wind project will create three substantial socioeconomic benefits. Landowners will receive increased income through the purchase of their wind rights by NSP or developers. The wind project will create construction jobs and activity in the area, and should lead to five to seven permanent jobs. Finally, taxation of towers and pads will generate revenues for local governments. On the other hand, the ALJ noted, if the wind project results in an increase in rates that would otherwise be avoidable, the increase may have an adverse effect on NSP's customers.

The ALJ noted that the Department and the Commission produced a joint report in 1992 describing the energy needs of the State of Minnesota and objectives for meeting those needs. One reported goal is to double the amount of renewable-based generating resources used in Minnesota by 2020. The addition of the wind project will lead to the attainment of 45 percent of that goal.

D. The record does not demonstrate that the design, construction, or operation of the proposed facility, or a suitable modification of the facility, will fail to comply with relevant policies, rules, and regulations of other state and federal agencies and local governments.

According to the ALJ, the record evidence shows that the project will comply with relevant policies, rules, and regulations of the Environmental Quality Board, other state and federal agencies, and local governments. The issuance of a certificate of need will not conflict with any other regulatory requirements, including those associated with NSP's bidding process.

Construction of the wind project through a bidding process will encourage competition consistent with the objectives of the Energy Policy Act of 1992.

E. Conclusion

The ALJ found that NSP's application substantially conforms to the requirements of all applicable statutes and rules, as interpreted by Commission Orders. The ALJ recommended that the Commission issue a certificate of need to NSP for approximately 100 MW of wind generation.

IV. COMMISSION ANALYSIS

A. The Certificate of Need

The Minnesota legislature passed legislation which requires NSP to add 225 MW of wind generation by December 31, 1998. The 100 MW proposed in NSP's certificate of need application is part of NSP's plan to fulfill the statutory mandate.

The Department and the Company developed and submitted proposed Findings of Fact and Conclusions of Law reflecting their agreement on the terms of NSP's proposal. The RUD-OAG had no objection to the terms agreed upon.

The ALJ conducted public and evidentiary hearings. After examining the record and all testimony and comments, the ALJ adopted Findings which were like in form and substance to the parties' stipulation. The ALJ found that the application substantially conforms to the requirements of all applicable statutes and rules, as interpreted by the Commission, and recommended that the Commission grant the requested certificate of need.

Having examined the full record, the Commission agrees with the ALJ that a certificate of need for NSP's 100 MW wind generation project is reasonable and appropriate. The Commission adopts the ALJ's Findings of Fact, Conclusions of Law, and Recommendation. The Commission will grant NSP its requested certificate of need.

B. Payment of Fees

Minn. Rules, part 7849.0210, subp. 3, states that no certificate of need shall be issued until all fees owed by the applicant are paid in full. At this time, it is impossible to calculate NSP's final fees because further cost information must be obtained from the Office of Administrative Hearings, the Department, the Office of the Attorney General, and the Commission.

NSP is under a statutory deadline to implement the additional 100 MW of wind generation. The Company cannot begin construction on the wind project until the Minnesota Environmental Quality Board grants site approval. The Board will not issue a site permit until NSP obtains a certificate of need from the Commission. NSP cannot pay its full fees until all cost information is available to it. Taken together, these factors create a significant problem for the utility attempting to comply with the full fee payment threshold of Minn. Rules, part 7849.0210, subp. 3. The Commission therefore finds that it is appropriate to consider a variance to the rule in these circumstances.

Minn. Rules, part 7829.3200 states that the Commission may grant a variance to a rule if the following criteria are met:

1. Enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule;
2. Granting of the variance would not adversely affect the public interest; and
3. Granting of the variance would not conflict with standards imposed by law.

The Commission finds that the criteria of Minn. Rules, part 7829.3200 have been met in this case. Enforcement of the fee rule would impose an excessive burden upon NSP by delaying construction of the wind facility and jeopardizing the Company's compliance with the statutory mandate. Because the Company has made a commitment to pay all fees, the public interest would not be adversely affected if the variance were granted. Finally, granting of the variance would not conflict with standards imposed by law.

The Commission will grant NSP a variance to the fee payment requirements of Minn. Rules, part 7849.0210, subp. 3. The Company is required to promptly pay all applicant's fees when they are assessed.

ORDER

1. The Commission grants NSP a certificate of need for the addition of 100 MW of wind generation.

2. The Commission grants NSP a variance to Minn. Rules, part 7849.0210, subp. 3, to allow the granting of the certificate of need prior to full payment of applicant's fees. NSP shall promptly pay all applicant's fees when they are fully assessed.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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